IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

Test.Case No. 1 of 2007(R)

IN THE MATTER OF THE WILL OF DR.A.N.SUBBARAO

PETITION FOR LETTER OF ADMINISTRATION OF THE WILL UNDER SECTION 278 OF THE INDIAN SUCCESSION ACT

PETITIONERS:
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1. MRS.GITA SUBBARAO, W/O.DR.SUBBARAO
   RESIDING AT `SEATARA', PLOT NO.139,
   KUMARANASAN NAGAR, ERNAKULAM-682 020.

2. A. KARTHIK RAO, S/O.DR.A.N.SUBBA RAO,
   REPRESENTED BY HIS POWER OF ATTORNEY HOLDER
   MRS.GITA SUBBARAO, MOTHER, RESIDING AT
   PLOT NO.139, `SEATARA', KUMARANASAN NAGAR,
   ERNAKULAM-682 020.

3. MS.SITARA, D/O.DR.A.N. SUBBARAO,
   EMPLOYED AT WELLCOME TRUST,
   MICROBIOLOGY, CMC HOSPITAL
   IDA SCUDDER ROAD, VELLOOR, TAMIL NADU.

BY ADV. SRI.T.L.ANANTHASIVAN

RESPONDENTS: NIL

THIS TESTAMENTARY CASE HAVING COME UP FOR ADMISSION ON 15/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Text.Case 1/07

PETITIONERS' EXHIBITS:

EXT.P1 - TRUE COPY OF THE COMPLAINT MADE BY THE FIRST PETITIONER TO THE S.I. OF POLICE, CENTRAL STATION, ERNAKULAM.

EXT.P2 - TRUE COPY OF THE ACKNOWLEDGMENT FROM THE CENTRAL POLICE STATION, ERNAKULAM.

EXT.P3 - TRUE COPY OF THE REPORT OF THE POLICE OFFICER, CENTRAL POLICE STATION, ERNAKULAM.

EXT.P4 - TRUE COPY OF THE PAPER PUBLICATION GIVEN BY THE VIJAY TIMES DT.24-5-2006.

EXT.P5 - TRUE COPY OF THE ADVERTISEMENT GIVEN IN THE HINDU PAPER, TRIVANDRUM EDITION DT.24-5-2006.

EXT.P6 - TRUE COPY OF THE WILL DT.15-5-1989.

PETITIONERS' WITNESSES:

PW1 - GITA SUBBA RAO

PW2 - RADHAKRISHNAN T.N.

- TRUE COPY-

P.S. TO JUDGE.

THOTTATHIL B. RADHAKRISHNAN, J.

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Test. Case No.1 OF 2007-R

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Dated this the 15th day of March, 2007.

JUDGMENT

This is an application for grant of Letters of Administration with Ext.P6 Will annexed.

2. In spite of public notice through newspapers, no objection is filed to this application.

3. Petitioners 1, 2 and 3 are respectively the wife, son and daughter of Dr.A.N.Subba Rao who, going by the materials on record, had been missing since late August, 1999.

4. P.W.1, the first petitioner, has given evidence that she had been residing with him. She is, therefore, the best person to speak about the latest known whereabouts of

Dr.A.N.Subba Rao. She has also proved that she had complained to the police about Dr.A.N.Subba Rao, being missing. Ext.P2 shows that such petition was received by the Station House Officer of the Central Police Station, Ernakulam. Ext.P3 evidences that the matter was investigated into by the police and referred as a case of man-missing. Exts.P4, P5(1) and P5(2) evidence that repeated newspaper advertisements were made touching the man-missing of Dr.A.N.Subba Rao. I believe the statement of P.W.1 that Dr.A.N.Subba Rao has not been heard after she made Ext.P1. I am satisfied that, by the deposition of P.W.1 and the other evidence, it is proved that Dr.A.N.Subba Rao has not been heard of for more than seven years after he disappeared. Now it is more than 7 ½ years. Under such circumstances, it is presumed, under Section 108 of the Evidence Act, that Dr.A.N.Subba Rao is dead.

5. P.W.2 is a Chartered Accountant. He has deposed that he knew Dr.A.N.Subba Rao and that Dr.Subba Rao executed Ext.P6 Will in his presence. He further deposed that

he had seen the testator signing the Will. He deposed that he was an attesting witness. He also deposed that he signed the Will as an attestor in the presence of the testator and had also seen the other attesting witness Sri.N.Balakrishna Pillai signing the Will as an attesting witness in the presence of the testator Dr.Subba Rao. He deposed that Dr.Subba Rao saw him and the other witness Sri.Balakrishna Pillai signing the Will. He identified Ext.P6 as that Will, made on 15-5-1989. He recognised the signature of Dr.A.N.Subba Rao, the testator. He also recognised the signature of the other attesting witness Sri.N.Balakrishna Pillai. I find no material to disbelieve the version of P.W.2. His testimony is trust-worthy and is entitled to be acted upon.

6. P.W.1 has spoken to have produced the original of Ext.P6 Will from her custody. She was residing with Dr.A.N.Subba Rao and the children. Ext.P6 Will has, therefore, been produced from proper custody. She asserts that the properties belong to Dr.A.N.Subba Rao and bequests are made therein in favour of wife and children.

7. For the aforesaid reasons, I am satisfied that Ext.P6 Will has been proved in accordance with law, as one duly executed by the late Dr.A.N.Subba Rao, as a Will, in accordance with law.

In the result, Letters of Administration with Ext.P6 Will attached is ordered to be issued in accordance with law.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

I am the first petitioner and the power of attorney holder of the second petitioner, who is my son. The third petitioner is my daughter.

This testamentary case is filed seeking letters of administration with the Will dated 15th May, 1989 executed by Dr.A.N.Subba Rao, attached. The testator is my husband. Since August, 1999, his whereabouts are not known. I am a person competent to know about his whereabouts. I am his wife and I was living with him. I had complained about his missing to the Sub Inspector of Police, Central Police Station, Ernakulam on 1st September, 1999. Ext.P1 is a copy of that complaint. Ext.P2 is the acknowledgment given by the police. Photo copies of Exts.P1 and P2 are marked. (The originals are perused by the Judge.) Ext.P3 is the notice given under Section 157(2) Cr.P.C. regarding the closure of the case by refer report on the ground that it is a case of man-missing. I have also published different notices in newspapers regarding his non-availability. Exts.P4 and P5 are marked. There are true photo copies of the newspapers which I had retained in

relation to news items and advertisements given in connection with the man-missing of my husband. This is the Will executed by Dr.A.N.Subba Rao, my husband. I am a beneficiary of that Will. Bequests are made therein, to my daughter and son also. The original Will was left in our house and it has been produced by me from our local custody. The Will has been duly executed by Sri.T.N.Radhakrishnan and N.Balakrishna Pillai, who have signed the said Will in proof of having attested the same. Ext.P6 is marked, subject to proof. I have enclosed schedule to the petition describing the movables and immovables dealt with in Ext.P6 Will. Proper valuation has also been made in accordance with law. The petitioners have not filed any other application for probate or letter of administration of that Will. To the best of my knowledge, information and belief, Dr.A.N.Subba Rao had not executed any other Will even after Ext.P6. The list of documents appended to the petition also would disclose the documents on the basis of which amounts are due to the petitioners on the basis of Ext.P6 Will. Petitioners are entitled to grant of Letter of Administration with Ext.P6 will annexed to it, in accordance

with law, as prayed for. The same may be granted.

I am a Chartered Accountant by profession. I know Dr.A.N.Subba Rao. He had executed a Will in my presence. I had seen him signing that Will. I am one of the attesting witnesses to that Will. I have signed that Will as an attestor in the presence of Dr.A.N.Subba Rao, the testator. I have also seen the other attesting witness Sri.N.Balakrishna Pillai signing the Will as an attesting witness in the presence of the testator Dr.A.N.Subba Rao, who saw both of us signing the Will. What is now shown to me is the Will (Ext.P6) of Dr.A.N.Subba Rao, made by him on 15-5-1989, in my presence and in the presence of Sri.N.Balakrishna Pillai. I recognise the signature of the testator. I also recognise the signature of Sri.N.Balakrishna Pillai. (Ext.P6 marked as proved).